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MEMORANDUM

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AZ CORP COMMISSION
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TO: Docket Control

FROM: Thomas M. Broderick
Director
Utilities Division
for

2016 MAY 6 PM 3 10

DATE: May 6, 2016

RE: STAFF'S RESPONSE TO ORAL COMMENTS IN THE MATTER OF THE COMMISSION INQUIRY INTO POSSIBLE MODIFICATION OF THE COMMISSION'S HOLDING COMPANIES AND AFFILIATED INTEREST RULES, A.A.C. ARTICLE 8, R14-2-801 ET. SEQ. (DOCKET NO. AU-00000A-15-0246)

Attached is the Staff Report regarding oral comments made by interested parties on Commission Inquiry into Possible Modification of the Commission's Holding Companies and Affiliated Interest Rules, A.A.C. Article 8, R14-2-801 et. seq., pursuant to Decision No. 75448. Decision No. 75448 ordered the Utilities Division to file with the Commission's Docket Control on or before May 6, 2016, a document which includes (1) a summary of all written comments filed by interested persons including those filed after April 4, 2016, and oral comments received at the oral proceedings in this matter; (2) the Utilities Division's responses to those comments.

TMB:MAC:nr/MAS

Originator: Matt Connolly

Arizona Corporation Commission
DOCKETED

MAY 06 2016

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DOCKET NO. AU-00000A-15-0246

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**STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION**

**COMMISSION INQUIRY INTO POSSIBLE MODIFICATION
OF THE COMMISSION'S HOLDING COMPANIES
AND AFFILIATED INTEREST RULES,
A.A.C. ARTICLE 8, R14-2-801 ET. SEQ.**


DOCKET NO. AU-00000A-15-0246

STAFF RESPONSE TO ORAL COMMENTS

MAY 6, 2016

STAFF ACKNOWLEDGMENT

The Staff Response to Oral Comments for Commission Inquiry into Possible Modification of the Commission's Holding Companies and Affiliated Interest Rules, A.A.C. Article 8, R14-2-801 et. seq., Docket No. AU-00000A-15-0246, was the responsibility of the Staff member listed below.



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INTRODUCTION

The Arizona Corporation Commission ("Commission") issued Decision No. 75448 on February 11, 2016. In that Decision, the Commission ordered that the Utilities Division prepare and file, by February 12, 2016, with the Office of the Secretary of State, (1) a Notice of Rulemaking Docket opening and (2) a Notice of Proposed Rulemaking for publication in the *Arizona Administrative Register* that included the proposed rule language along with a preliminary Economic, Small Business and Consumer Impact Statement with respect to the proposed rules. The Proposed Rulemaking package was filed with the Office of the Secretary of State on February 12, 2016, and the Notice of Proposed Rulemaking was published in the *Arizona Administrative Register* on March 4, 2016.

The proposed rule language amends Arizona Administrative Code R14-2-802(A) to read as follows:

R14-2-802. Applicability

A. These rules are applicable to all Class A investor-owned utilities under the jurisdiction of the Commission and are applicable to all transactions entered into after the effective date of these rules. Notwithstanding the preceding sentence, these rules shall not apply to a telecommunications utility whose retail telecommunications services have been classified as competitive pursuant to A.A.C. R14-2-1101 et seq., except as may otherwise be determined by a future Commission order.

Decision No. 75448, also requested that interested parties provide comments concerning the Notice of Proposed Rulemaking by filing written comments with the Commission's Docket Control by April 4, 2016. Decision No. 75448, then directed the Utilities Division to file with the Commission's Docket Control on or before April 11, 2016, a document including (1) a summary of any written comments filed by interested persons between the effective date of that Decision (February 11, 2016) and April 4, 2016, and the (2) the Utilities Division's responses to those comments. Staff filed this Report on April 11, 2016.

Finally, Decision No. 75448, ordered the Utilities Division to file with the Commission's Docket Control on or before May 6, 2016, a document which includes (1) a summary of all written comments filed by interested persons including those filed after April 4, 2016, and oral comments received at the oral proceedings in this matter; (2) the Utilities Division's responses to those comments.

SUMMARY OF ALL WRITTEN COMMENTS FILED REGARDING THE PROPOSED RULES AND STAFF'S RESPONSE TO THEM

Informal written comments were received on December 16, 2015, from the Arizona Local Exchange Carriers Association ("ALECA"); AT&T; Windstream and its certificated subsidiaries ("Windstream") ; Integra Telecom ("Integra") ; on December 14, 2015, from Arizona Public Service

“APS”); and on December 10, 2015, from Qwest Corporation d/b/a CenturyLink QC, CenturyLink Communications, L.L.C. and CenturyLink Public Communications, Inc. (collectively “CenturyLink”).

All of the telecommunications providers filing informal comments supported the proposed Rule change. Windstream states that the Legislature’s exemption of competitive telecom providers from a review of asset transfers or dispositions, supports the requested change to the Rules and that given the addition of Subpart (F) to A.R.S. §40-285, Commission approval should not be required if that carrier’s affiliate (or holding company) chooses to reorganize, merge, consolidate or refinance. AT&T states that although the Rules provide for a waiver process, applying for and receiving waivers still ties up resources and because waivers are subject to interpretation, they do not provide the type of certainty desired by carriers. Integra believes that the Rules are unnecessary for competitive carriers. APS does not oppose the change but would oppose any other amendments to the Rules that would have the effect of increasing the affiliate regulation of electric utilities or affect any waivers granted to APS by the Commission. CenturyLink states that the telecommunications market has changed dramatically and that competitive telecom providers cannot make up for their bad business diversification decisions by passing the losses through to utility customers in the form of rate increases and thus, there is no need to subject competitive providers to the Rules.

One party, Qwest Corporation d/b/a CenturyLink QC, CenturyLink Communications, L.L.C., and CenturyLink Public Communications, Inc. (collectively “CenturyLink”) filed comments dated April 4, 2016. The language of these comments are nearly identical to the Informal Comments dated December 10, 2015, filed by CenturyLink in this docket. CenturyLink does not oppose the proposed Rule change. CenturyLink again states that the telecommunications market has changed dramatically and competitive telecom providers cannot make up for their bad business diversification decisions by passing the losses through to utility customers in the form of rate increases. CenturyLink further states the proposed amended Rule language follows the Arizona legislative example and logic that exempts competitive telecom providers from the requirement to secure Commission approval of the disposition of assets by public service corporations and the acquisition of the stock of public service corporations. Finally, CenturyLink states that the widespread granting of waivers by the Commission from the current Rules show that the Rules are over-broad, lead to disparate levels of relief and a waste of Commission and Staff resources.

In response to both informal and formal filed comments, Staff notes that no party filing any comments have opposed the proposed Rule change. Staff believes that the proposed rule change will eliminate the need for the Commission to process and grant certain waivers in the future. This will conserve Commission resources and the resources of affected parties. Staff again points out that the proposed rule language would allow the Commission to, by future order, require filings and review transactions when it deems necessary. Staff continues to support the proposed Rule language and again recommends the Commission adopt the amendment.

SUMMARY OF ORAL COMMENTS REGARDING THE PROPOSED RULES AND STAFF'S RESPONSE TO THEM

Four persons representing various telecommunications companies and two members of Staff spoke at the April 14, 2016, oral proceeding in Phoenix. All of the oral comments supported the proposed rule change.

Staff presented an introduction to the proposed rule change language and a procedural recap of filings and comments received. In response to questions received from the Administrative Law Judge ("ALJ") just prior to the Hearing, Staff indicated that the following Class A companies with intrastate revenues greater than \$10 million and whose services have been deemed competitive would be exempted by the rule change¹:

- AT&T Corp.
- CenturyLink Communications, LLC
- Comcast Phone of Arizona, LLC
- Cox Arizona Telecom, L.L.C.
- Eschelon Telecom of Arizona, Inc.
- MCI Communications Services, Inc.
- Qwest Corporation
- Securus Technologies, Inc.
- tw telecom of arizona llc
- XO Communications Services, LLC

Staff also responded that there is no information to indicate any of these utilities are financially unstable or have engaged in any transactions to the harm of customers. Finally, Staff indicated that probable benefits to exempted telecommunications companies would include cost and time savings and customers are neither expected to benefit to any noticeable extent nor be harmed by the proposed rule revision. In response to an oral question from the ALJ, Staff responded that it would have no objection to having the new language being added as a separate subsection.

XO Communications Services, LLC, Talk America, LLC, McLeod USA Telecommunications Services, LLC, Paetec Communications, LLC and Windstream Services, LLC., supported the proposed rule change for reasons of efficiency, economy and the reasons presented in Staff's Report filed on April 11, 2016. They also stated that because they are not rate regulated entities, the annual Affiliated Interest Rules Report they are currently required to file doesn't provide the Commission with any useful regulatory information. Finally, they also stated that this rule tracked the Arizona Legislative statute change made in 2013 and endorsed the ALJ's proposal to make the proposed rule language a separate section as doing so would mirror the actions of the Arizona Legislature.

¹ Staff indicated at the Hearing that the Frontier companies would be exempted under the proposed rule change. Since then, Staff has found that Frontier's services have not been determined to be competitive. As a result, the Frontier companies would not be exempted due to the proposed rule change.

Cox Arizona Telecom, Inc. supported the proposed rule amendment because application of the rules was appropriate in an era of monopoly utilities based on concerns regarding traditional rate of return regulation. The telecommunications industry is now competitive and thus the rules should no longer apply and the amendment would remove an unnecessary regulatory burden.

AT&T, Inc. supported the rule amendment for the reasons filed in its informal comments dated December 16, 2015.

Qwest Corporation, CenturyLink Communications, LLC and CenturyLink Public Communications, Inc. (“CenturyLink Companies”) stated that they are in favor of the rule amendment for the reasons stated in its informal and formal written comments filed with the Commission.

In response to all comments presented, either informal, formal or oral, Staff again notes that no party filing any comments have opposed the proposed Rule change. Staff continues to believe that the proposed rule change will eliminate the need for the Commission to process and grant certain waivers in the future and will conserve Commission resources and the resources of affected parties. Staff reiterates that the proposed rule language would allow the Commission to, by future order, require filings and review transactions when it deems necessary. Finally, Staff position continues to be to support the proposed Rule language and recommends the Commission adopt the amendment.